

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION

AMERICAN DELTA PARTY; and  
ROQUE “ROCKY” DE LA FUENTE,

PLAINTIFFS,

vs.

KIM WYMAN, in her official capacity  
as the Secretary of State of the State of  
Washington,

DEFENDANT.

Case No.: 3:20-cv-05045-BHS

JOINT STATUS REPORT AND  
DISCOVERY PLAN

The parties, through their undersigned counsel, submit this Joint Status Report and  
Discovery Plan as required by Fed. R. Civ. P. 26(f) and LCR 16 and 26(f).

**1. A Statement of the Nature and Complexity of the Case**

***Plaintiffs’ Statement***

This case is a challenge of the constitutionality of several statutes under Washington  
Election Code. Plaintiff American Delta Party is alleging that RCW 29A.56.600 through .670,  
facially and as-applied, violate rights guaranteed to Plaintiff American Delta Party under the

1 First and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth  
2 Amendment to the United States Constitution, to the extent the above referenced statutes require  
3 American Delta Party to organize, provide notice, and hold a convention in the State of  
4 Washington to nominate Plaintiff's nominees for president and vice president of the United  
5 States. Further, Plaintiff American Delta Party is alleging that RCW 29A.56.660 - .670 violate  
6 rights guaranteed to American Delta Party under the Presidential Elector Qualifications Clause of  
7 Article II, Section 1, Clause 2 of the United States Constitution, to the extent the challenged  
8 statutory provisions require, or Defendant interprets them to require, that American Delta Party  
9 must select residents of the State of Washington to be its candidates for the Washington State  
10 Electoral College in excess of the exclusive list of qualifications imposed under the Presidential  
11 Elector Qualifications Clause.  
12

13  
14 Plaintiff Roque De La Fuente is alleging that RCW 29A.56.031, as-applied, violates  
15 rights guaranteed to him under the Presidential Qualifications Clause of Article II, Section 1,  
16 Clause 5 of the United States Constitution, as an unconstitutional additional qualification to seek  
17 the office of President of the United States, and the First and Fourteenth Amendments to the  
18 United States Constitution, as an excessive ballot access filing fee as authorized and/or permitted  
19 to be imposed on presidential candidates by the challenged statute.  
20

21 Plaintiffs view these as legal issues, and will conduct discovery accordingly. The parties  
22 believe that a majority of the relevant records can and will be exchanged through initial  
23 disclosures. Plaintiff will likely supplement with written discovery requests and select  
24 depositions.  
25

26 In evaluating the constitutionality of restriction on ballot access, the rigorousness of the  
27 court's inquiry depends upon the extent to which a challenged regulation burdens First and  
28

1 Fourteenth Amendment rights. When constitutional rights are subjected to severe restrictions,  
2 the regulation must be narrowly drawn to advance a state interest of compelling importance.  
3 Courts must also examine whether the regulation has the effect of handicapping otherwise  
4 qualified candidates. However, when a state election law provision imposes only reasonable,  
5 nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the  
6 State's important regulatory interests are generally sufficient to justify the restrictions.  
7

8 The provisions of Washington's Election Code as challenged by Plaintiffs, facially and  
9 as-applied, requiring minor parties to hold a convention, as well as additional requirements  
10 related, referencing, or tethered-to the convention requirement represent a severe restriction such  
11 that the State of Washington cannot show a compelling governmental interest, and further, serve  
12 the purpose of handicapping an otherwise qualified candidate.  
13

14 When evaluating a qualifications clause challenge, the question is whether a state has  
15 imposed an additional qualification requirement on those seeking the Office of President beyond  
16 requirements set forth in the United States Constitution. The provisions of Washington's  
17 Electoral Code challenged by Plaintiffs, facially and as-applied, impose additional qualification  
18 requirements beyond those set forth in the Constitution.  
19

20 ***Defendant's Statement***

21 This case presents four legal issues: (1) the constitutionality, facially and as-applied to  
22 American Delta Party, of Washington's statutory requirement that minor party candidates for  
23 president and vice president obtain signatures at a "convention," Wash. Rev. Code § 29A.56.610;  
24 (2) the constitutionality, facially and as-applied to American Delta Party, of five Washington  
25 statutes that relate to or reference the "convention" requirement, *id.* §§ 29A.56.620 through .660;  
26 (3) the constitutionality of Washington's requirement that Washington presidential electors be  
27  
28

1 residents of Washington State; (4) the constitutionality, as-applied to Mr. De La Fuente, of the  
2 Washington statute permitting major political parties to “determine which candidates are to be  
3 placed on the presidential primary ballot for that party, *id.* § 29A.56.031  
4

5 These are legal questions. Accordingly, it is Defendant’s position that discovery will be  
6 targeted and minimal.

7 With respect to ballot access, the relevant legal test is well-established. First, courts  
8 determine the magnitude of the burden that the requirement places on candidates and determine  
9 whether it is “severe.” Second, courts identify the interests put forward as justifications for the  
10 requirement and the fit between the justification and the requirement. When a requirement is  
11 severe, the State must identify a compelling governmental interest and demonstrate that the  
12 requirement is the least restrictive means of accomplishing that interest. For all other  
13 requirements, the State need only identify an “important” regulatory interest and show a  
14 “reasonable” fit between the interest and the requirement.  
15

16 Washington’s “convention” requirement is not a severe burden and there is a reasonable  
17 fit between the convention requirement and multiple important state interests.  
18

19 With respect to the presidential elector requirements, the Washington Legislature  
20 exercised its constitutional authority to direct the manner in which electors are appointed. *See*  
21 U.S. Const., art. II, § 1, cl. 2.  
22

23 With respect to presidential primaries for major political parties, Washington law strikes  
24 a constitutionally-permissible balancing of the associational rights of major political parties and  
25 the public’s interest in participating in the nominating process of major political parties.

## 26 **2. Proposed deadline to Join Additional Parties**

27 The parties propose this deadline be set June 22, 2020.  
28

1 **3. Consent to Proceed Before Magistrate**

2 No.

3 **4. Proposed Discovery Plan**

4 A. Date of Rule 26(f) Conference and Initial Disclosures

5  
6 Plaintiffs' counsel and Defendant's counsel held a Rule 26(f) conference on May 11,  
7 2020. The parties Rule 26(a)(1) initial disclosures for current parties were exchanged on May  
8 18, 2020. Any Rule 26(a)(1) initial disclosures for any parties joined to this action on or before  
9 June 22, 2020 will be exchanged no later than July 6, 2020.

10 B. Subjects, Timing, and Potential Phasing of Discovery

11 ***Plaintiffs' Perspective on Discovery***

12  
13 The parties have had preliminary discussions regarding the discovery sought by  
14 Plaintiffs. Defendants have represented that they intend to produce as much of this information  
15 as possible through their initial discoveries. The parties anticipate that written discovery will be  
16 sought by all parties. Plaintiffs intend to conduct additional discovery by deposition testimony.  
17 Owing to the COVID-19 pandemic the parties are uncertain when in person discovery can be  
18 safely accomplished.

19 ***Defendant's Perspective on Discovery***

20  
21 Defendant's anticipate seeking very little discovery. Any discovery will be primarily  
22 written but may also include a small number of depositions.

23 C. Electronically-Stored Information

24  
25 The parties expect some limited discovery may be in electronic form and intend to make  
26 every attempt to stipulate and agree to the form or forms in which electronic discovery should be  
27 produced or otherwise made available. To the extent any issues regarding the format for  
28

1 electronic discovery arise, the parties will confer in good faith and, if necessary, bring them to  
2 the attention of the Court. If necessary, the parties will enter into an agreement similar to the  
3 Court's Model Agreement Regarding Discovery of ESI.  
4

5 The parties do not believe the "Additional Provisions for More Complex Cases" attached  
6 to the Court's Model Agreement will be necessary in this case.

7 D. Privilege Issues and Protective Order

8 At this time, the parties are not aware of any specific privilege issues but they agree that  
9 any documents withheld on the basis of privilege and pre-dating the filing of the complaint in  
10 this action should be listed on a privilege log. The parties agree that no changes should be made  
11 to the federal and local civil rules and federal and state law governing issues of privilege and  
12 work product protection, including protections for materials that are inadvertently produced. The  
13 parties anticipate entering an agreement to govern the designation of confidential information  
14 based on the Court's Model Stipulated Protective Order.  
15

16 E. Changes in the Limitations on Discovery

17 The parties agree that no changes should be made at this time to the federal and local  
18 civil rules regarding discovery, reserving the right of each party to seek leave of the court to  
19 exceed the limitations on discovery imposed by those rules should it become necessary.  
20

21 F. Need for Additional Orders

22 The parties do not currently request the Court to enter any orders, other than a Scheduling  
23 Order. However, Plaintiffs anticipate the filing of a motion seeking a preliminary injunction of  
24 the requirement to hold nominating conventions in the State of Washington for the 2020  
25 presidential election. An appropriate order will be filed with any such motion.  
26

27 **5. Rule 26(f)(1) Topics**

1           A.     Prompt Case Resolution

2           The parties anticipate prompt resolution through dispositive motions, such as cross-  
3 motions for summary judgment. The parties, or the Court, may request oral argument on  
4 dispositive motions. If the case is not fully resolved by way of dispositive motions, the court  
5 should move to set a trial date.  
6

7           B.     Alternative Dispute Resolution

8           Because Plaintiff is challenging the constitutionality of a state statute, this case is not a  
9 good candidate for alternative dispute resolution.  
10

11          C.     Related Cases

12          The parties are not aware of any related cases, as defined by LCR 3(g)(4).

13          This Court previously presided over *De La Fuente v. Wyman*, 3:16-cv-05801, which  
14 challenged the notice requirement for presidential nominating conventions for minor political  
15 parties.  
16

17          D.     Discovery Management

18          The parties agree that electronic service of all documents, including discovery requests  
19 and responses, shall constitute sufficient service. Subject to the parties' respective statements  
20 about the propriety, timing and sequencing of discovery, they agree to manage discovery in an  
21 efficient manner that minimizes expense and burden.  
22

23               i.     Joint Submission and/or Letter Briefing for Discovery Motions

24          The parties agree to use the expedited procedure for consideration of discovery motions,  
25 pursuant to the procedures set forth in Local Rule 37.

26               ii.    Electronic Service

27          The parties agree that, for purposes of service and computation of response deadlines  
28

1 under Local Rules, filing by ECF will constitute service by hand on the date ECF automated  
2 notification is sent. The parties agree that electronic service of all other documents, including  
3 discovery and responses, shall also constitute sufficient service.

4  
5 E. Anticipated Discovery Sought

6 To the extent necessary, the parties intend to use standard discovery (interrogatories,  
7 requests for production of documents, requests for admission, oral depositions and subpoenas) to  
8 investigate the topics set forth in 4(B), *supra*.

9  
10 F. Anticipated Motions

11 Plaintiffs will file a motion for preliminary injunctive relief on or before June 15, 2020.  
12 The parties anticipate they will file cross-motions for summary judgment. Defendant reserves  
13 the right to bring a motion to dismiss at any time permitted under the civil rules. Additionally,  
14 the parties reserve the right to bring a motion for summary judgment at any time permitted under  
15 the civil rules.

16  
17 G. Preservation of Discoverable Information

18 All parties confirm that reasonable and appropriate steps are being taken to preserve all  
19 potentially discoverable information, including ESI, based on the parties' current knowledge of  
20 Plaintiffs' allegations.

21  
22 H. Privilege Issues

23 The parties are not aware of any unusual privilege issues but they agree that any  
24 information withheld on the basis of privilege will be logged as required under the civil rules.

25  
26 I. Model Protocol for Discovery of ESI

27 The parties reviewed the Court's Model Agreement Regarding Discovery of ESI. The  
28 parties agree the Model Agreement may be applicable to this case and plan to discuss this issue



1 further.

2 **6. Proposed Discovery Cutoff**

3 The parties propose the dates below. However, the parties agree that these discovery  
4 deadlines should be stayed pending the Court's consideration of any motion for preliminary  
5 injunction or dispositive motion.  
6

7 Absent a stay described above, the parties propose that written discovery must be served  
8 by August 14, 2020. The parties propose that response to written discovery shall be served no  
9 later than October 16, 2020. The parties propose that all discovery shall be complete by  
10 November 20, 2020, providing that the COVID-19 pandemic does not impose scheduling  
11 difficulties for oral depositions. The parties agree to request a status conference to resolve any  
12 COVID-19 scheduling issues with the Court.  
13

14 **7. Bifurcation**

15 The parties agree that at this time there is no need for bifurcation.  
16

17 **8. Pretrial Statements and Pretrial Orders**

18 The parties anticipate resolving this case through cross-motions for summary judgment,  
19 rather than a trial. Should trial be necessary, the parties agree to the use of pretrial statements and  
20 a pretrial order under LCR 16 and LCR 16.1.  
21

22 **9. Individualized Trial Program/Alternative Dispute Resolution**

23 The parties do not believe this case is appropriate for the Court's Individualized Trial  
24 Program. The parties do not feel that alternative mediation is appropriate in this case.  
25

26 **10. Case Shortening or Simplification Suggestions**

27 The parties have no further suggestions for shortening or simplifying the case at this time,  
28 but will work together in discovery to efficiently prosecute and defend this action.

**11. Trial Readiness Date**

The parties anticipate resolving this case through cross-motions for summary judgment rather than a trial.

**12. Jury or Non-Jury Trial**

Should a trial be necessary, Plaintiffs request a jury to resolve any issues of material fact.

**13. Estimated Length of Trial**

The parties anticipate resolving this case through cross-motions for summary judgment, rather than a trial. However, if a trial should be necessary, the parties will file an updated joint status report setting forth their views on the estimated length of a trial.

**14. Trial Counsel Contact Information**

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5 **15. Trial Scheduling Issues and Complications**

6 The parties request the Court defer setting a trial date until after a decision whether the  
7 case can be resolved through a motion for summary judgment.

8 **16. Status of Service of Process**

9 Defendant has been served.

10 **17. Scheduling Conference Needs**

11 The parties believe a scheduling conference should be scheduled after the completion of  
12 discovery to set the deadline for the filing of dispositive motions, responses and replies on or  
13 about December 18, 2020.  
14

15 RESPECTFULLY SUBMITTED AND DATED: May 26, 2020

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*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify, under penalty of perjury, that I electronically filed a true and correct copy of the foregoing document with the Clerk of the Court of the Western District of Washington by using the CM/ECF system which will send notification of such filing to all parties registered.

Dated this 26<sup>th</sup> day of May, 2020.

s/ Yonten Dorjee  
Yonten Dorjee, Paralegal  
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